

1 ADAM J. GUTRIDE (State Bar No. 181446)
adam@gutridesafier.com
2 SETH A. SAFIER (State Bar No. 197427)
seth@gutridesafier.com
3 KRISTEN G. SIMPLICIO (State Bar No. 263291)
kristen@gutridesafier.com
4 **GUTRIDE SAFIER LLP**
100 Pine Street, Suite 1250
5 San Francisco, California 94111
Telephone: 415.271.6469
6 Facsimile: 415.449.6469

7 HASSAN A. ZAVAREEI (State Bar No. 181547)
TYCKO & ZAVAREEI LLP
8 1828 L Street, N.W., Suite 1000
Washington, DC 20036
9 Telephone: (202) 973-0900
Facsimile: (202) 973-0950

10 Attorneys for Plaintiff Scott Koller

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 SCOTT KOLLER, an individual, on behalf of
15 himself, the general public and those similarly
16 situated,

17 Plaintiff,

18 v.

19 MED FOODS, INC., AND DEOLEO USA,
20 INC.

21 Defendants.

CASE NO. 14-cv-2400 (RS)

**DECLARATION OF STEVEN
WEISBROT IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 10, 2018

Time: 1:30 p.m.

Courtroom 3, 17th Floor

Judge: Hon. Richard Seeborg

1 I, STEVEN WEISBROT, hereby declare under penalty of perjury as follows:

2 1. I am a partner at the class action notice and settlement administration firm, Angeion Group,
3 LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal
4 knowledge.

5
6 2. I have been responsible in whole or in part for the design and implementation of hundreds
7 of class action administration plans and have taught numerous accredited Continuing Legal
8 Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital
9 Media in Class Action Notice Programs, as well as Class Action Claims Administration, generally.
10 Additionally, I am the author of frequent articles on Class Action Notice, Class Action Claims
11 Administration and Notice Design in publications such as *Bloomberg*, *BNA Class Action*
12 *Litigation Report*, *Law360*, the *ABA Class Action and Derivative Section Newsletter* and
13 numerous private law firm publications. I have given public comment and written testimony to the
14 Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail,
15 email, digital media and print publication, in effecting Due Process notice, and I have met with
16 representatives of the Federal Judicial Center, to discuss the proposed amendments to Rule 23 and
17 suggested educational programs for the judiciary concerning class action notice procedures.

18
19 3. Prior to joining Angeion’s executive team, I was employed as Director of Class Action
20 services at Kurtzman Carson Consultants, a nationally recognized class action notice and
21 settlement administrator. Prior to my notice and claims administration experience, I was
22 employed in private law practice and I am currently an attorney in good standing in the State of
23 New Jersey and the Commonwealth of Pennsylvania.

24
25 4. By way of background, Angeion Group is a class action notice and claims administration
26 company formed by a team of executives that have had extensive tenures at five other nationally
27 recognized claims administration companies. Collectively, the management team at Angeion has
28

1 overseen more than 2,000 class action settlements and distributed over \$10 billion to class
 2 members. The executive profiles as well as the company overview are available at
 3 http://www.angeiongroup.com/meet_the_team.htm.

4 5. My notice work comprises a wide range of class actions that includes product defect, false
 5 advertising, employment, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases.
 6 Likewise, I have been instrumental in infusing digital and social media, as well as big data and
 7 advanced targeting into class action notice programs. Notice programs that I have designed have
 8 been approved in myriad cases under Rule 23, including *In Re Whirlpool Corp. Front Loading*
 9 *Washer Products Liability Litigation* (MDL No. 2001) (May 12, 2016) (Boyko, J.); *In Re LG*
 10 *Front Loading Washing Machine Class Action Litigation- Civil Action No. 08-SI (MCA)(LDW)*
 11 (June 17, 2016) (Cox Arleo, J.); and *In Re: Pool Products Distribution Market Antitrust*
 12 *Litigation MDL No. 2328* (December 31, 2014) (Vance, J.).

14 6. This declaration will describe the notice program that my colleagues and I suggest using in
 15 this matter, including the considerations that informed the development of the plan and why it will
 16 provide Due Process of Law to the Class Members.

18 SUMMARY OF NOTICE PROGRAM

19 7. The notice program is the best notice that is practicable under the circumstances, as the
 20 parties are implementing a robust integrated publication campaign consisting of state of the art,
 21 national internet banner advertisements, traditional publication notice in a widely-read consumer
 22 magazine, sponsored notice on two leading class action-related websites, a national press release
 23 and targeted newspaper publication. The notice program also includes an informational website
 24 and toll-free telephone line where Class Members can learn more about their rights and
 25 responsibilities in the litigation.

27 8. The notice program will deliver an approximate 75.6% reach with an average frequency of
 28 2.10 times. What this means in practice, is that separate and apart from the newspaper notice,

sponsored websites, and the media earned as a result of the press release (all of which are difficult to measure in terms of reach percentage but will nonetheless inform the class of their rights and responsibilities under the settlement) 75.6% of our Target Audience will see an advertisement on average 2.10 each. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm”. Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges”, at 27 (3d Ed. 2010).

CLASS DEFINITION

9. The “Settlement Classes” here are defined as: all persons who, between: (i) May 23, 2010 and the date of Preliminary Approval, purchased, in the United States, any of the Extra Virgin Olive Oil Products except for resale and/or (ii) between May 23, 2010 and December 31, 2015, purchased, in the United States, any of the Other Olive Oil Products.” “Extra Virgin Olive Oil Product” means bottles of Bertolli Extra Virgin olive oil, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.” “Other Olive Oil Product” means the liquid Bertolli Extra Light or Classico olive oil products.

MEDIA NOTICE TARGET AUDIENCE

10. This matter contemplates a nationwide settlement class as defined in the Class Definition section found *supra* in paragraph 9. To create the media notice program and verify its effectiveness, our media team analyzed data from 2017 comScore/GfK MRI 2016 Fall Fusion. “Bertolli” is a measured entity in MRI; as a result, the following target definition was used to profile Class Members:

- Salad or Cooking Oil Types Total Users Last 6 Months (Principal Shopper) [Olive Oil] and
- Salad or Cooking Oil Brands Total Users Last 6 Months (Principal Shopper) [Bertolli]

Based on the target definition, the potential audience size is estimated at 39,340,000. This target

audience, based on objective syndicated data, will allow the parties to report the reach and frequency to the court with the confidence that the reach within the target audience and the number of exposure opportunities is based on objective data and exceeds the Federal Judicial Center's threshold as to reasonableness in notification programs.

11. Understanding the socio-economic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the target audience has the following characteristics:

- Adults ages 35-64 with an average age of 50
- A large percentage (61.9%) are married
- 50.4% have a college degree
- 58.9% live in households with total income above \$75K
- 64.5% are employed, with most working full time (52.7%)

12. To identify the best vehicles to deliver messaging to the Target Audience, we reviewed the media quintiles, which measure the degree to which an audience uses media relative to the general population. Here, it shows that newspaper, magazine, and internet are the strongest platforms through which to reach potential Class Members based on above average usage.

13. Given the strength of these mediums and our target audience's heavy reliance on those forms of media, we recommended running a publication in a magazine that resonates well with our target audience and utilizing a robust internet advertising campaign, as well as a limited newspaper campaign to comply with notice requirements of the California Legal Remedies Act ("CLRA") statute. This media schedule will allow us to deliver an effective reach level for notice messaging while maximizing efficiencies. Each form of media notice will be discussed in further detail below as well as those forms of media that we have included to help stimulate claims activity, but which are not capable of precise calculations in terms of reach percentage, such as the sponsored

websites and press release.

ONLINE NOTICE

14. Multiple targeting layers will be implemented to help ensure delivery to the most appropriate users, inclusive of search targeting, category contextual targeting, keyword contextual targeting, and site retargeting. Inventory will run on desktop and mobile devices to reach the most qualified audience. Search terms will be relevant to olive oils, cooking oils, dressings, and Bertolli's. Targeting users who are currently browsing or have recently browsed content in categories such as cooking, recipes, and olive oils will also help qualify impressions to ensure messaging is served to the most relevant audience. Where available, purchase data will be utilized to further qualify the audience.

15. The internet banner notice portion of the notice program will be implemented using a 4-week desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50 and 300x50). A 3x frequency cap will be imposed to maximize reach. The banner notice portion of the notice program is designed to result in serving approximately 39,340,000 impressions.

16. To combat the possibility of non-human viewership of the digital advertisements and to verify effective unique placements, Angeion utilizes Integral Ad Science ("IAS"), the leading ad verification company to prevent fraudulent activity¹. IAS has received the Media Rating Council

¹ Integral Ad Science (IAS) is a global technology and data company that builds verification, optimization, and analytics solutions to empower the advertising industry to effectively influence consumers everywhere, on every device. They solve the most pressing problems for brands, agencies, publishers, and technology companies by verifying that every impression has the opportunity to be effective, optimizing towards opportunities to consistently improve results, and analyzing digital's impact on consumer actions. Built on data science and engineering, IAS is headquartered in New York with global operations in ten countries.

1 “MRC”² accreditation for Sophisticated Invalid Traffic (SIVT) detection for desktop and mobile
2 web traffic.

3 17. We will perform initial A/B testing of versions of the advertisements to determine which
4 versions generate the highest click-through rate and conversion rate (i.e. completion of a claim
5 form or request for exclusion) and will use the higher performing versions for subsequent
6 impressions. Likewise, we will track which webpages and times of day are generating the highest
7 click-through rate and conversion rate, and to the extent practicable, redirect future impressions to
8 those higher-performing locations instead of lower-performing locations.

9
10 18. To track campaign success, we will implement conversion pixels throughout the case filing
11 website to better understand audience behavior and identify those most likely to convert. The
12 programmatic algorithm will change based on success and failure to generate conversions
13 throughout the process. Successful conversion on the Claim Submission button will be the
14 primary goal, driving optimization of the campaign.

15 **PUBLICATION NOTICE**

16
17 19. To identify the best print vehicle for delivering the message to the target audience, MRI
18 was used to analyze and filter publications to determine the titles with the highest reach against our
19 target audience. *People* was chosen as the best title for this notice program due to its strong reach
20 towards the target audience. One ½ page B&W insertion is recommended in this title and will be
21 distributed on a national level. A chart explaining the circulation in the general public and within
22 our target audience is produced below.
23
24

25 ² The Media Rating Council was established in the early 1960’s at the behest of the US
26 congress. The objective or purpose to be promoted or carried on by Media Rating Council is: To
27 secure for the media industry and related users audience measurement services that are valid,
28 reliable and effective. To evolve and determine minimum disclosure and ethical criteria for media
audience measurement services. To provide and administer an audit system designed to inform
users as to whether such audience measurements are conducted in conformance with the criteria
and procedures developed.

Publication	Circulation	Target Audience
People	3,510,533	7,346,000

20. To comply with the notice requirements of the CLRA, we will also cause the Published Notice, to be published once each week for four successive weeks as 1/6 page each in the Legal Notices section of the San Francisco Chronicle.

PURCHASED AND EARNED MEDIA

21. Angeion will cause the settlement to be listed and promoted through two leading class action settlement websites, www.topclassactions.com and www.classaction.org. These sites, are known to create awareness of pending settlements among consumers and will be instrumental in seeding and disbursing news of the underlying settlement.

22. In order to further boost awareness of the settlement, gain online visibility, and gain media pickup, Angeion will cause a Press Release to be issued via PR Newswire. Issuing a press release will help create earned media via press coverage, which will drive credibility and engagement among Settlement Class Members and beyond.

23. Neither the class action settlement websites nor the press release are capable of precise reach calculations and are thus not included in the reach and frequency figures presented to the court. Nonetheless, all of these mechanisms will serve an important function in that they will help stimulate interest in the settlement and drive Class Members to the dedicated settlement website to read and understand their rights under the settlement agreement.

RESPONSE MECHANISMS

24. The notice program will implement the creation of a case website, www.oliveoilsettlement.com, where Class Members can easily view general information about this class action, review relevant Court documents and view important dates and deadlines

1 pertinent to the Settlement. The website will be designed to be user-friendly and make it easy for
 2 Class Members to find information about the case or file a claim. The website will also have a
 3 “Contact Us” page whereby Class Members can send an email with any additional questions to a
 4 dedicated email address. Likewise, Class Members will be able to file a claim directly on the
 5 website.

6 25. A toll-free hotline devoted to this case will be implemented to further apprise Class
 7 Members of the rights and options in the Settlement. The toll-free hotline will utilize an
 8 interactive voice response (“IVR”) system to provide Class Members with responses to frequently
 9 asked questions and provide essential information regarding the Settlement. This hotline will be
 10 accessible 24 hours a day, 7 days a week.
 11

12 **REACH AND FREQUENCY**

13 26. The integrated publication notice program incorporates advanced internet notice and
 14 publication in a widely read consumer magazine that over-indexes with our Target Audience.
 15 This declaration provides the reach and frequency evidence which courts systematically rely
 16 upon in reviewing class action publication notice programs for adequacy. The reach
 17 percentage and the number of exposure opportunities, meets or exceed the guidelines as set forth
 18 in the Federal Judicial Center’s *Judges’ Class Action Notice and Claims Process Checklist and*
 19 *Plain Language Guide*.
 20

21 27. Specifically, the publication notice program is designed to deliver a 75.6% reach with
 22 an average frequency of 2.1 times each. The newspaper publication, class action settlement
 23 websites, press release, informational website and toll-free hotline are not calculable in the reach
 24 percentage but will nonetheless aid in informing the Class Members of their rights and options
 25 under the settlement.
 26
 27
 28

1 28. It is my opinion that the Notice Program is fully compliant with Rule 23 of the Federal
2 Rules of Civil Procedure, provides Due Process of Law and is the best notice that is
3 practicable under the circumstances.

4 **CONCLUSION**

5 29. In my opinion, the Notice Plan will provide full and proper notice to Settlement Class
6 Members before any claims, opt-out and objection deadlines. After the Notice Plan, Angeion will
7 provide a final report verifying its effective implementation.

8 30. It is my opinion that the Notice Program provides Class Members Due Process of Law and
9 is the best notice that is practicable under the circumstances and is fully compliant with Rule 23 of
10 the Federal Rules of Civil Procedure.

11 31. Angeion estimates that the cost for Notice, Claims Administration and distribution will be
12 approximately \$525,000.00 - \$675,000.00. The administration-related expenses will be correlated
13 to the number of overall claims filed and the distribution-related expenses.
14

15 I hereby declare under penalty of perjury that the foregoing is true and correct.

16 Dated: March 28, 2018

17 
18 STEVEN WEISBROT